

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
OFFICE OF SELF-INSURANCE PLANS**

**INITIAL STATEMENT OF REASONS**

**Workers' Compensation – Self-Insurance Plans**

**Proposed Amendments to Title 8, California Code of Regulations,  
Sections 15203.2, 15203.11 [new], 15251, and 15430**

The Acting Director (“Director”) of the Department of Industrial Relations (“Department”) proposes to add a new section 15203.11 and to amend sections 15203.2 and 15251 of Title 8 of the California Code of Regulations, for purposes of implementing recent amendments to Labor Code Section 3702.2(a). Those amendments require the Director to obtain detailed information needed to evaluate the administrative costs, expenditures, solvency, and performance of public self-insured employer workers’ compensation programs. The Director also proposes to make nonsubstantive changes to section 15430 to bring that section into conformity with other recent statutory and regulatory amendments.

**General Information:**

Labor Code section 3700 requires every employer in California other than the State to secure the payment of workers’ compensation for injured workers by either (1) being insured against liability to pay compensation by one or more insurers duly authorized to write workers’ compensation insurance in this state, or (2) by securing from the Director a certificate of consent to self-insure. A certificate of consent to self-insure may be secured either as an individual employer or as one employer in a group of employers, and is contingent upon furnishing proof satisfactory to the Director of the employer’s ability to self-insure and pay any compensation that may become due to its employees. Subdivision (c) of Section 3700 expressly extends the opportunity to self-insure to “any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement[.]”

Labor Code Sections 3700.1 through 3705 establish criteria for securing, maintaining, and revoking certificates to self-insure, as well as requirements for administrative oversight by the Director. The Self-Insurance Plan regulations at sections 15201 through 15499.5 of Title 8, set forth these criteria, requirements, and related procedures in detail, and delegate much of the Director’s authority to manage self-insurance programs to the Department’s Office of Self-Insurance Plans (“OSIP), headed by a Chief.

The statutes and regulations treat private self-insured employers and public self-insured employers differently in certain respects. The most significant distinction is that private self-insurer employers are required to post collateral to secure their potential liability for administering and paying workers’ compensation claims, while public self-insured employers are not subject to this requirement. In addition, the Self-Insurers’ Security Fund (SISF), established pursuant to Labor Code Sections 3740 – 3747, is available to assume the liabilities of private

self-insured employers who default on their workers' compensation obligations or become insolvent. However, neither the SISF nor any other entity is responsible for the workers' compensation claim obligations of a public self-insured employer who becomes insolvent.

Labor Code Section 3702.2(a) requires all self-insured employers to “file a self-insurer’s annual report in a form prescribed by the [D]irector.” Historically, the information in these reports has been used, among other things, to help determine the amount of security (*i.e.* collateral) that should be posted by private self-insured employers, and to prepare aggregate summaries of all self-insured employer liabilities, including separate summaries for public and private self-insured employers. SB 863, a landmark workers' compensation reform measure adopted by the Legislature in 2012, added the following language to Labor Code Section 3702.2(a).

“Public self-insured employers shall provide detailed information as the director determines necessary to evaluate the costs of administration, workers' compensation benefit expenditures, and solvency and performance of the public self-insured employer workers' compensation programs, on a schedule established by the director. The director may grant deferrals to public self-insured employers that are not yet capable of accurately reporting the information required, giving priority to bringing larger programs into compliance with the more detailed reporting.”

SB 863 also required the Department’s Commission on Health and Safety and Workers’ Compensation to examine the public self-insured program in 2013 and publish a report and recommendations addressing the costs, solvency and performance of public self-insured workers’ compensation programs, and provisions in the event of insolvencies. (§ 19 of SB 863, adopting Labor Code Section 3702.4, with an automatic repealer effective January 1, 2015.)<sup>1</sup> The resulting report, *Examination of the California Public Sector Self-Insured Workers’ Compensation Program* (Bickmore Group, October 2014) (“Bickmore Report”), posted online at [https://www.dir.ca.gov/chswc/Reports/2014/Public\\_Sector\\_Self\\_Insured\\_WC.pdf](https://www.dir.ca.gov/chswc/Reports/2014/Public_Sector_Self_Insured_WC.pdf), included findings and recommendations used in the development of these proposals. A subsequent report *Proposed Workers’ Compensation Data Elements for Submission by California Self-Insured Public Entities and Self-Insurance Joint Powers Authorities* (Bickmore Group, June 2016) (“Bickmore Data Element Report”), posted at <https://www.dir.ca.gov/osip/pubandforms.htm>, followed by public forums and a pilot study provided more specific input on the reporting requirements addressed in these proposals and their cost impacts.

### **Proposed Amendments to OSIP regulations:**

The proposed regulations will implement, interpret, and make specific the mandate of Labor Code section 3702.2(a) by requiring self-insured public entities to file annual reports providing demographic data along with claims and financial data about their workers’ compensation programs. The proposals include two new forms for reporting this data: Form P-1 for public employers with stand-alone worker’s compensation programs, and Form J-1 for programs

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<sup>1</sup> SB 863 addressed several aspects of the workers’ compensation system, most notably creating Independent Medical Review and Independent Bill Review to greatly curtail litigation costs and delays, while at the same time increasing benefit amounts paid to injured workers.

administered through Joint Powers Authorities (“JPAs”). The proposals also modify the existing annual reports currently being filed by public employers (on Form AR-2) by requiring that they include aggregate claim data covering the most recent fiscal year, each of five preceding fiscal years, and all earlier years with reported claims.

The problem addressed by these proposals is the problem that led to the adoption of Labor Code Sections 3702.2 and 3702.4 as part of the SB 863 reform package. Because there is no security or separate fund to provide workers’ compensation benefits when a public self-insured employer becomes insolvent, as some did during the prior decade, it is critically important to have a clear picture of program viability so steps may be taken to avoid a situation in which workers employed by these agencies are left without access to medical treatment or compensation for job-related injuries and illnesses.

The overall purpose and necessity of the added reporting requirements are to provide the Director and the public employers themselves with sufficient data to evaluate the viability of their self-insured workers’ compensation programs. In particular, financial and claims data that is specific to the public employer’s workers’ compensation program will be segregated from other insurance costs and liability information with which it may be lumped on other financial statements and reports. Reported demographic data (population, area, number of employees, employee classifications, and the like) will also allow these entities to compare their own claims experience and costs with other agencies having similar characteristics.

The proposed amendments supplement public self-insurers’ existing duty to submit detailed individual claim data with a duty to report aggregate claims data focusing on the amount and types of workers’ compensation benefits paid, medical costs, claims administration costs, and estimated future liabilities estimated. The bulk of this data already resides on common software used by claims administrators or in financial statements that can be provided to claims administrators. Overall, this data will help public self-insurers better understand the financial strengths and weaknesses of their workers’ compensation programs and make necessary adjustments in terms of budgets, funding and risk management.

These proposals continue the existing use of online platforms for the submission of reports to OSIP, while continuing to allow reporting in alternative formats provided that all required data is included. In addition, these proposals make non-substantive corrections to an OSIP hearing regulation.

### **Technical, Theoretical, or Empirical Studies, Reports or Documents:**

The Director relied upon the following reports, studies, and documents to draft these proposals:

1. The 2014 Bickmore Report, referred to above, which resulted from a study performed on behalf of the Commission of Health and Safety and Workers’ Compensation pursuant to the mandate of former Labor Code Section 3702.4 (§ 19 of SB 863). This report recommended that the Department consolidate and improve data collection from public self-insurers to provide policymakers, regulators, and the public with more accurate and

meaningful information about the costs, benefits and risks of public self-insurers' workers' compensation programs.

2. The 2016 Bickmore Data Element Report, also referred to above, which analyzed existing claim and financial reporting requirements for public self-insured employers, including financial reports filed with other agencies, and made specific recommendations on data that should be reported to and collected by OSIP to fulfill the mandate of Labor Code Section 3702.2(a).
3. OSIP conducted a pilot study in the spring of 2017 in which four public self-insured employers with stand-alone programs and six JPAs submitted data on draft versions of the reporting forms contemplated by these proposals. This study provided OSIP with important feedback used to refine the contents of the forms and also for estimating the costs of compliance.

### **Specific Technologies or Equipment:**

The proposed regulations require claims administrators for public self-insurers, including JPAs, to submit demographic profile data and summary financial data electronically via the same online platform already provided by the Department. The proposed regulations also require claims administrators to submit claims benefits and claims administration data electronically using a spreadsheet of the filers' choice.

The Director notes that online filing and reporting has been required for full participation in the workers' compensation system for nearly a decade,<sup>2</sup> and the Director assumes that all TPAs serving public self-insurers as well as the public agencies themselves have regular Internet access. In any rare instance where this is not the case, OSIP will continue to accept forms submitted on paper.

### **Economic Impact Assessment:**

The costs and economic impacts of these proposals exist within the context of several thousand local public agencies that have permission to self-insure their workers' compensation claims pursuant to Labor Code Section 3700(c). Self-insurance means that, in lieu of obtaining and paying premiums for a workers' compensation policy with a private insurer, the employer directly pays for all workers' compensation benefits to which its employees are entitled as well as all claim administration costs. Self-insured employers are required by law to use a separately certified third party administrator (TPA) to handle their claim responsibilities, unless the employer itself is certified to self-administer its claim. No employer is required to self-insure, but economies of scale coupled with effective management and a strong culture of worker safety can make self-insurance significantly less expensive than paying for workers' compensation coverage through a policy with an insurance company.

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<sup>2</sup> See the description of Electronic Adjudication Management System ("EAMS"), used to manage cases and filings in the workers' compensation court system at <https://www.dir.ca.gov/dwc/EAMS/EAMS.htm>. OSIP's online filing platform is found at <https://efiling.dir.ca.gov/OSIPO/>.

The costs of these proposals are the costs associated with gathering and reporting data. Every public self-insured employer will need to gather and report financial and demographic data. Agencies with individual programs and Joint Powers Authorities (JPAs) that maintain programs on behalf of a consortium of local agencies will also need to gather and report workers' compensation claim data. The agencies that administer these programs, consisting of 31 private TPAs who contract with self-insured public employers (including JPAs) to administer their programs, plus the 32 individual employers and 8 JPAs who self-administer, will have most of the required financial and claims data, and will do the actual reporting of information to OSIP.<sup>3</sup>

The TPAs and self-administered programs will incur the greatest costs under these proposals, including start-up costs for software coding changes and internal systems changes to facilitate the reporting of required data. Based on a projected cost of \$100 per hour (either for internal personnel costs or for a third-party vendor), the Director estimates that each program administrator will incur anywhere from five to 24 hours in start-up costs (*i.e.* \$500 to \$2400), depending on the systems used. Because all of the information being reported should be readily available from existing sources, no agency should have to create a new system to obtain and report the required information.

The Director estimates that in the first year of operation under these proposals, the administrators will incur an additional \$400-700 in costs for collecting and reporting claims data (2-5 hours @ \$100), demographic data (1 hour @ \$100), and financial data (1 hour @ \$100) for each constituent agency. The following charts show the calculation of aggregate and average costs for program administrators by type.

Initial Cost in First Fiscal Year	Hourly rate	# of hours	Minimum Cost	Maximum Cost	TPAs	# of Agencies	Total Cost: Low -High
Software/System Work	\$100	5 – 24	\$500	\$2,400	31		\$15,500 - \$74,400
Claims Data	\$100	2 – 5	\$200	\$500		589	\$117,800 – \$294,500
Financial Data	\$100	1	\$100	\$100		589	\$ 58,900
Demographic Data	\$100	1	\$100	\$100		4,422	\$442,200
<b>Statewide Total for 31 TPAs</b>							<b>\$634,400 - \$870,000</b>
<b>Average First Year Cost (= Total ÷ 31)</b>							<b>\$20,464.52 - \$28,064.52</b>

First Year Cost for Employers who Self-Administer	Hourly rate	# of hours	Minimum Cost	Maximum Cost	# of Employers	Total Cost: Low -High
Software/System Work	\$100	5 – 24	\$500	\$2,400	32	\$16,000 - \$76,800
Claims Data	\$100	2 – 5	\$200	\$500	32	\$6,400 – \$16,000
Financial Data	\$100	1	\$100	\$100	32	\$ 3,200
Demographic Data	\$100	1	\$100	\$100	32	\$ 3,200
<b>Total First Year Costs</b>						<b>\$28,800 - \$99,200</b>

<sup>3</sup> OSIP records provided a precise count of the numbers of public employers, JPAs, JPA members, TPAs and self-administered public employers and JPAs affected by these proposals.

<b>First Year Costs for JPAs who Self-Administer</b>	Hourly rate	# of hours	Minimum Cost	Maximum Cost	JPAs	Members	Total Cost: Low -High
Software/System Work	\$100	5 – 24	\$500	\$2,400	8		\$4,000 - \$19,200
Claims Data	\$100	2 – 5	\$200	\$500		384	\$76,800 – \$192,000
Financial Data	\$100	1	\$100	\$100		384	\$ 38,400
Demographic Data	\$100	1	\$100	\$100		384	\$ 38,400
Total First Year Costs							<b>\$157,600 - \$288,000</b>
<b>Average First Year Cost (= Total ÷ 8)</b>							<b>\$19,700 - \$36,000</b>

Once software and system changes are made, administrators will be able to generate report data from their own records automatically. The responsibility to collect and report data will continue in subsequent years, but the Director estimates that the process will be more routine and the time requirements cut in half, *i.e.* \$100-250 (= 1 – 2.5 hours) for claims data, \$50 (= .5 hour) per entity for demographic data, and \$50 (= .5 hour) for financial data for each constituent agency. With software/system work eliminated, the totals are reduced to \$309,450 - \$397,800 annually for the 31 TPAs (average \$9,982.26 - \$12,832.26 each), \$6,400 - \$11,200 annually for each of the 32 employers who self-administer, and \$76,800 - \$134,400 for the 8 JPAs who self-administer (average \$9,600 - \$16,800 each).

The costs for agencies required only to collect and report demographic and financial data up the line to TPAs or JPAs were calculated in the same manner, but are considerably less as shown in the following charts.

<b>First Year Costs for Agencies Providing Data to TPAs or JPAs</b>	Hourly rate	# of hours	Minimum Cost	Maximum Cost	# of Agencies	Total Cost
Financial Data	\$100	1	\$100	\$100	4,419	\$ 441,900
Demographic Data	\$100	1	\$100	\$100	4,419	\$ 441,900
Total First Year Costs						<b>\$883,800</b>

<b>Annual Ongoing Costs for Agencies Providing Data to TPAs or JPAs</b>	Hourly rate	# of hours	Minimum Cost	Maximum Cost	# of Agencies	Total Cost
Financial Data	\$100	.5	\$50	\$50	4,419	\$ 220,950
Demographic Data	\$100	.5	\$50	\$50	4,419	\$ 220,950
Total Ongoing Annual Costs						<b>\$441,900</b>

Thus, the overall costs statewide to implement and administer the new reporting requirements will be, at most, approximately \$1.25 million in the first year and less than half that in subsequent years. The greatest costs will be incurred by program administrators (TPAs plus employers and JPAs who self-administer), but these added costs, as reflected in the charts above, are negligible in terms of the overall costs of administering a workers' compensation program. The Director anticipates that the additional costs will be absorbed by the affected administrators and agencies and likely be offset by savings generated through other SB 863 reforms that have led to steady declines in the overall cost of California's workers' compensation system.

The additional expenditures required by these proposals are unlikely to provide enough stimulus to create any new jobs or businesses, and conversely the proposals will not, of themselves, dissuade any public agency choosing to self-insure. Based on this analysis, the Director has made initial determinations that these proposals (1) will not create or eliminate jobs within California, (2) will not create new business or eliminate existing businesses within California, and (3) will not affect the expansion of businesses currently doing business within California.

These proposals are designed to and will have a positive economic impact on the health and welfare of California residents and worker safety by making public self-insurer workers' compensation programs more transparent as to their solvency and their claims benefits and loss adjustment expenses. The availability of this information should result in the Director and state being better prepared to forestall or ameliorate situations in which the continuing availability of workers' compensation benefits is jeopardized by a self-insured public employer's projected or actual insolvency.

### **Consideration of Alternatives:**

The Bickmore Report, on which this rulemaking relies, identified potential alternatives to more state oversight for public self-insured employer workers' compensation programs. These alternatives were: (1) maintaining the status quo, (2) requiring public self-insurers to make security deposits similar to those required for private self-insurers to cover potential workers' compensation claim liabilities in the event the employer becomes insolvent; and (3) create a public entity security fund supported by assessments and security deposits, similar to the Self-Insurers' Security Fund that covers private self-insured employers. None of these alternatives is reasonable or adequate or authorized by existing law. Maintaining the status quo would require the Director to ignore the mandate of Labor Code Section 3702.2(a) that these proposals are designed to implement. The other alternatives would require additional legislation and be far more costly for public self-insurers.

### **Rationale, Necessity, and Purpose of Each Proposal:**

Section 15203.2: This section is entitled "Continuing Financial Capacity for Individual Private Self-Insurers." Three of the four subsections ((a), (c), and (d)) address the financial capacity of private self-insured employers, while the other subsection (b) pertains to reports by JPAs and is contextually out of place. Consequently, existing subsection (b) is being deleted from this section and its contents are being incorporated into a new section 15203.11 concerning the financial capacity of public self-insurers. Current subsections (c) and (d) will then be redesignated as subsections (b) and (c) respectively.

Section 15203.11 [new]: This proposed new section is entitled "Continuing Financial Capacity for Public Self-Insurers." This section will establish new reporting requirements for self-insured public employers with individual or "stand-alone" programs, whether self-administered or administered through a TPA, and added reporting requirements for JPAs. These reports are distinct from the annual reports that public self-insurers currently are required to file pursuant to section 15251.

- *Subsection (a)* will require each public self-insurer holding an active or revoked Certificate of Consent to Self-Insure to file an annual report on demographic data and a summary of the financial condition of its workers compensation program on a new Form P-1 or in a similar format that includes Form P-1's data elements.

The specific data elements in proposed new Form P-1 are divided into four sections. Part A. "General" requests four pieces of identifying information. Part B. "Employer Profile" requests Operating Expenditures, Location and Population, type of Workers' Compensation claims administration, employee demographics, additional breakdowns for educational employers, wages and salaries, and benefit information. Part C "Annual Financial Summary Report" requests information about the employer's most recent audited statement, its workers' compensation liabilities, and its estimated future liabilities. Part D "Balance Sheet and Statement of Revenues and Expenses for Workers' Compensation Program" covers assets, liabilities, fund balances, income, expenses, and other related information, including the employer's net positions at the beginning and end of the reporting period. Finally, the form must be signed and identify by name and title the person who completed the form plus the person attesting to its accuracy.

Each of these data elements has been identified through the Bickmore reports, stakeholder discussions, and the pilot study referred to above as necessary for making the operation of public self-insured workers' compensation programs transparent and providing the data needed to fairly assess the financial health and continuing viability of those programs. In particular, the report requires employers to segregate out workers' compensation benefits, claims, and administrative costs from other liability and insurance costs with which it may be lumped on other financial reports prepared by or for the employer. It also requires demographic data needed to identify risk factors such as high risk occupations and to compare program performance with other public self-insured employers that have similar characteristics.

Unlike JPAs (covered by subsection (b) below), subsection (a) does *not* require public self-insurers with stand-alone programs to file audited financial statements with notes and schedules. Public agency audits may cover multiple programs, including all forms of claims liability and insurance coverage, and the Director does not believe there is a need to obtain these full audits on a regular or routine basis. The Director also does not see a need to require public agency employer to incur the expense of obtaining a separate audit for just its workers' compensation program, as long as the reported data is drawn from an independently audited financial statement or other reliable source document (covered by subsection (d) below).

- *Subsection (b)* is a revised version of the current language of section 15203.2(b). This subsection will require JPAs holding an active or revoked Certificate of Consent to Self-Insure to file an annual report on a new Form J-1 or in a similar format that includes Form J-1's data elements. This is a change from the existing requirement for JPAs to file "a consolidated report" but does not prescribe a particular form or format.

The specific data elements in proposed new Form J-1 are divided into four sections that are similar but not identical to the data elements in Form P-1. Part A. “General” requests identifying information, which will include the identity of the JPA’s constituent members and the nature of workers’ compensation provided to those members by the JPA. Part B. “Employer Profile” requests Operating Expenditures, Location and Population, type of Workers’ Compensation claims administration, employee demographics, additional breakdowns for educational employers, wages and salaries, and benefit information. Part C “Annual Financial Summary Report” requests information about the JPA’s most recent audited statement, its workers’ compensation liabilities, and its estimated future liabilities. Part D “Balance Sheet and Statement of Revenues and Expenses for Workers’ Compensation Program” covers assets, liabilities, fund balances, income, expenses, and other related information, including the JPA’s net positions at the beginning and end of the reporting period. Finally, the form must be signed and identify by name and title the person who completed the form plus the person attesting to its accuracy.

Each of these data elements has been identified through the Bickmore reports, stakeholder discussions, and the pilot study referred to above as necessary for making the operation of JPA workers’ compensation programs transparent and providing the data needed to fairly assess the financial health and continuing viability of those programs.

Subsection (b) continues the existing requirement (in current section 15203.2(b)) for JPAs to submit copies of their audited financial statements with notes and schedules. The JPAs that maintain self-insured workers’ compensation programs are typically created for that specific purpose or for the somewhat broader but still limited purpose of claims liability and risk management for their constituent member agencies. Consequently, the audited statements themselves are more focused and useful, and the Director has not identified a reason to *discontinue* this filing requirement.

- *Subsection (c)* specifies that the reports must be submitted through an online portal on the OSIP website by October 1 of each year, and that the reports shall cover the preceding July 1 to June 30 fiscal year. Filing through an online portal is consistent the existing requirement in section 15251(a) for the filing of annual reports. The fiscal year reporting requirement is based on the fiscal year used by the State of California and most if not all local agencies within state, which makes it the most convenient way to obtain, organize, and compare data. The October 1 filing date allows sufficient time to obtain and pull data from a report for the preceding fiscal year. The fiscal year reporting requirement and October 1 deadline are also consistent with the existing annual report requirements for public self-insurers in section 15251(c).
- *Subsection (d)* specifies that the financial information in these reports must be based on the most recent certified, independently audited financial statement, *if available*. This carries over an existing requirement in current section 15203.2(b) and makes it applicable to public self-insurers with stand-alone programs as well as JPAs.

Notably, this subsection does not require the financial statement to be current nor impose an obligation on public agencies to obtain annual audits. The Director assumes that not

all agencies obtain annual financial audits but that most if not all are audited or obtain other reliable financial statements for budget, reporting, and transparency purposes at least every two or three years. Because these reports will be used to evaluate trends and measure the health and viability of programs over the long term, there is less need for annual updating of each and every data element.

This subsection will require that reported information be drawn from the most recent certified, independently audited financial statement, and it sets forth a hierarchy of alternatives when the most recent statement is over three years old or no such statement is available. The specifications with regard to the type of statement are designed to ensure the objective independence and accuracy of the reported data.

Section 15251: This section governs self-insurer annual reports. In subsection (c), which sets forth requirements for public self-insurer annual reports, a new paragraph (4) is being added to require aggregate claims information for the current fiscal year, for each of the preceding five fiscal years, and for all claims reported prior to that five-year period. Paragraph (2) of this section currently requires the reporting of individual claim data covering the same time frames. However, the added requirement to provide aggregate claims data will make the annual reports more useful as a forecasting and evaluation tool while requiring limited additional effort by reporting parties. Because workers' compensation claims can remain open for many years and even decades for purposes of providing future medical care or when a worker suffers permanent total disability, it is important to measure trends, project future liabilities, and assess continuing viability based on several years' worth of data.

Section 15430: This section authorizes the Director to initiate an investigation or hold a hearing on enumerated types of disputes or appeals. Three nonsubstantive amendments are proposed for this section to bring them into alignment with other statutory and regulatory references. In subsection (a), the reference to Labor Code Section 3701.5(g) will be changed to Labor Code Section 3701.5(f), to conform with a 2012 statutory amendment which redesignated former subdivision (g) as subdivision (f). In subsections (b) and (c), the title "Manager" will be changed to "Chief" to conform with the current title of the head of OSIP.